NO. 82-5112

Office - Supreme Court, U.S.
FILED
AUG 23 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

ZOILA ALFONSO,

Appellant,

vs.

BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY,

Appellee.

On Appeal from the Supreme Court of New Jersey

MOTION OF APPELLEE BOARD OF REVIEW, DEPARTMENT OF LABOR AND INDUSTRY, STATE OF NEW JERSEY TO DISMISS OR TO AFFIRM

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Pursuant to Rule 16.1(b) and (d), the Attorney General of the State of New Jersey, on behalf of the appellee, moves to dismiss the appeal or to affirm the judgment of the Supreme Court of New Jersey on the ground that the due process question presented is so insubstantial as to obviate the need for further review.

Counter-Statement of the Case

This case commenced with the filing by appellant of a claim for unemployment insurance benefits in a claims office in the City of Newark, New Jersey (Aa1).* Eighteen days after the filing of her claim, she returned to the claims office and was interviewed by an examiner (Aa2 n.1). Following the interview that day, a Notice of Determination was personally handed to appellant at the claims office holding her ineligible for benefits (Aa2 n.1; Aa39). The Notice, written in English, advised appellant, who did not read or write that language, that any appeal from the determination must be filed within seven days (Aa39). Ten days later she secured a translation of the Notice from a community organization, which also assisted her in filing an appeal (Aa2-Aa3). Following the dismissal of the appeal as untimely by the administrative agency (Aa37, Aa38), appellant appealed to the New Jersey courts, contending that the failure to give her notice of the seven-day time limit for administrative appeals in her native language, Spanish, violated the due process clause of the Fourteenth Amendment as well as Section 601 of the 1964 Civil Rights Act, 42 U.S.C. Sec. 2000d.

In a decision dated April 26, 1982, the New Jersey Supreme Court, with two Justices dissenting, rejected both arguments (Aa1).** Respecting the due process question,

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* Aa is used to refer to the appendix to appellant's Jurisdictional Statement.

** The statutory contention under the Civil Rights Act is neither discussed nor argued in appellant's Jurisdictional Statement, which states (at p. 10) that "[t]he issue presented by this appeal" is the procedural due process question. Since the statutory issue is thus not presented on the appeal, it will not be adverted to further here.

the court acknowledged "the difficulties that non-English-speaking people encounter in our society" and agreed that the use of bilingual notices in instances such as this would be justified by "administrative and humanitarian considerations." (Aa8). It noted in the latter regard that New Jersey has in fact prepared a Spanish translation of the Notice of Determination for use in unemployment cases (Aa9, Aa44), though the court was unable to make a finding on the record before it that this document had been furnished to appellant (Aa9).* At any rate the court, citing various state and lower federal court decisions that have had occasion to address the constitutional issue, held that the furnishing of notices and decisions in unemployment cases in a language other than English is not mandated by due process. The court thus aligned this State with the view expressed in the cited federal and state decisions that "although bilingual or multilingual notices may in some instances be desirable, their use is not constitutionally required." (Aa9-Aa10). It stated in this regard, in language reminiscent of that in several of the other decisions that have addressed this issue:

> The decision to provide translation, encompassing as it does the determination of when a translation should be provided, and to whom, and in what language is one that is best left to those branches of government that can better assess the changing needs and demands of both the non-English speaking popu-

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*The court also observed that it was "not unreasonable" to conclude from certain notations on the Notice of Determination and in the claims office's notes of its interview with appellant that an interpreter assisted her at the interview and explained the time limitations to her. It found it unnecessary to resolve this factual issue, however, in view of its holding that Spanish-language assistance in these cases is not constitutionally required. (Aa2).

lation and the government agencies that provide the translation.

Appellant filed a Notice of Appeal with this Court pursuant to 28 U.S.C. Sec. 1257(2) on July 26, 1982 (Aa41).

ARGUMENT

The constitutional question presented by appellant is not a substantial one warranting plenary review by this Court, because the same due process contention has been rejected in every reported federal and state decision that has had occasion to address it and because the procedural deficiency asserted here at most represented an isolated departure from prescribed administrative practice in New Jersey.

That the due process issue proffered by appellant is not a substantial constitutional question warranting consideration by the Court is evident from two circumstances present in this case. First, as discussed in the New Jersey Supreme Court's opinion below, the administrative procedure in effect since 1978 mandates the furnishing of a Spanish translation of the Notice of Determination—which contains notice of the time limits for appeals—to unemployment insurance claimants who are literate only in that language. Because of the huge volume of claims processed in the Newark office where appellant filed her claim, the New Jersey Department of Labor could not affirmatively prove that this Spanish-language document was in fact given to appellant, and the New Jersey Supreme Court made no finding on this point. Similarly, the practice in New Jersey claims offices serving a substantial Hispanic population has for many years been to

insure that an interpreter is available to assist Hispanics who cannot read or understand English. The New Jersey Supreme Court alluded to documentary evidence indicating that an interpreter assisted appellant at her claim interview and explained the appellate time limitations; however, the court declined in the absence of definitive proof to resolve this factual issue.

Despite the New Jersey Supreme Court's inability on the present record to make a definitive finding that appellant had in fact received the Spanish translation of the Notice of Determination as required by the state administrative policy, the crucial point is that that procedure did and does require such a written translation to be furnished to Hispanic claimants, and that any departure from this practice that may have occurred here represented an isolated and inadvertent deviation from the prescribed policy. Hence, if this Court were to grant review in this case, a holding in appellant's favor on the constitutional issue would have minimal, if any, impact on New Jersey unemployment insurance claimants as a class. This fact, together with the uncertainty as to whether a deviation from the prescribed policy in fact occurred here at all, compels the conclusion that the constitutional issue tendered is not a "substantial" one for purposes of the Court's jurisdiction under Sec. 1257(2).

Nor is this procedural due process question substantial in terms of its merits. The proposition that government is required by the Fourteenth Amendment in general, or the Court's decision in *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) in particular, to provide decisions, notices and other documents in the native language of non-English-speaking persons, whether in unemployment insurance cases or in other instances of government interaction with its citizens, has been rejected by virtually every federal and state court that has con-

sidered the issue. *E.g. Carmona* v. *Sheffield*, 475 F.2d 738 (9th Cir. 1973) (unemployment insurance notices); *Kuri* v. *Edelman*, 491 F.2d 684(7th Cir. 1974) (welfare suspension notice); *Frontera* v. *Sindell*, 522 F.2d 1215 (6th Cir. 1974) (civil service examination); *DaLomba* v. *Director of Division Employment Security*, 369 Mass. 92, 337 N.E.2d 687 (Mass. 1975) (unemployment insurance determination and notice of right of appeal); *Hernandez* v. *Department of Labor*, 83 Ill. 2d 512, 416 N.E.2d 263 (Ill. 1981) (same); *Guerrero* v. *Carleson*, 109 Cal. Rptr. 201, 512 P.2d 833 (Cal. 1973) (welfare notice); *Nuez* v. *Diaz*, 421 N.Y.S.2d 770 (Sup. Ct. 1979) (summons with notice of object of action). *Cf. Tahan* v. *Hodgson*, 662 F.2d 862 (D.C.Cir. 1981) (complaint served in foreign country in language of that nation).

In its seminal opinion in *Guerrero*, the Supreme Court of California explained why Spanish-language notices or translations need not be given to Spanish-speaking claimants in order to satisfy the familiar due process notice standard pronounced by the Court in *Mullane*. First, said the court, since Hispanics, like non-English-speaking members of other ethnic groups, must frequently interact and communicate with English-speaking people in the public and private sectors—be it a landlord, grocer, employer or motor vehicle agency—it may reasonably be assumed that they "experience strong and repeated incentives either to learn the English language or to develop a reliance on bilingual persons who can translate for them when necessary." 512 P.2d at 836. Second, a claimant, as illustrated by the assistance obtained by the present appellant, normally would have access to a variety of private or public sources to assist him in communicating with claims office personnel or translating claim notices. *Ibid.* Third, it may be assumed that a claimant, having applied for benefits so important to him and, perhaps, his family, will act prompt-

ly to secure a translation of a formal document given him by the claims office. *Ibid.*

In addition to these reasons, the *Guerrero* court took note of the broad implications of a constitutional ruling in favor of claimants. Such a due process holding, it pointed out, would presumably apply not only to Hispanics but to all claimants known by the agency to be literate only in some other language. *Id.* at 837-838. The rationale of such a holding, the court added, would also encompass all other forms of interaction between non-English-speaking citizens and government in which significant rights, benefits or duties are implicated—an election, for example, or a tax notice. *Id.* at 838. Quoting the Ninth Circuit's decision in *Carmona* v. *Sheffield, supra,* the court observed that such a ruling, insofar as it required states and the federal government "to provide forms and to conduct its affairs and proceedings in whatever language is spoken and understood by any person or group affected thereby," could virtually cause government to "grind to a halt." *Ibid.*

Because the failure of the New Jersey claims office to provide appellant with a Spanish translation of the Notice of Determination—assuming this occurred at all—represented a departure from prescribed state policy and procedure, and because federal and state courts have almost unanimously rejected the notion that due process requires government to furnish notices to Spanish-speaking individuals in their native language, the constitutional claim proffered here cannot be deemed a substantial one warranting review under Sec. 1257(2).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the present appeal should be dismissed for want of a substantial federal constitutional question. Alternatively, the judgment of the Supreme Court of New Jersey should be summarily affirmed.

Respectfully submitted,

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